IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1066 of 2005
In
SPECIAL CIVIL APPLICATION No. 483 of 1997

with
CIVIL APPLICATION No.6719 of 2005
in
LETTERS PATENT APPEAL No. 1066 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJITBHAI MAFATBHAI MAKWANA - Appellant(s)

Versus

GUJARAT FISHERIES CO.OP ASSO. LTD. & 1 – Defendant(s)

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Appearance :
MR RK MISHRA for Petitioner No(s).: 1.

None for Respondent No(s).: 1,2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 02/08/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The appellant being aggrieved by order passed by the learned Single Judge is before this Court with a complaint that the petitioner was appointed on probation and the period was extended from time to time and as in accordance with the Service Rules, period cannot be extended beyond two years, the petitioner's services could not be terminated after he had completed three years. The submission in fact is that there is a deemed confirmation.

2. In our considered opinion there is nothing like a deemed confirmation in the service world, because employer always reserves his right in his favour to confirm or not to confirm an employee who has been appointed on probation. The process of confirmation requires a deliberation and decision taking process after taking into consideration the total and complete service career of the employee. If for some reason or the other orders relating to termination/ dismissal or confirmation are not passed, then because of the lapse on the part of the employer, the employee would not gain anything. When a process is to be undertaken and decision is to be taken after application of mind, then a default would not provide premium in favour of the employee.

3. It was next contended that before the Court it was submitted that the project has come to an end, therefore the petitioner has been removed from service. The submission is that if that was the real cause then the letter terminating the services was based on a fraud.

4. In our considered opinion, the letter of termination/ removal simply said that the period of probation had come to end and the services of the petitioner were no longer required. If to justify their cause and in reply to the allegations made in the writ application the employer gives further details then those details would not adversely affect the defence of the employer in terminating the employee on the ground of completion of probation and non confirmation of the service.

5. We find no reason to interfere. The Letters Patent Appeal is dismissed.

6. In view of dismissal of the appeal on merits, no orders on Civil Application No.6719 of 2005 are needed. It is accordingly rejected.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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